

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60621

FILE: B-185896

DATE: March 10, 1976

MATTER OF: Futronics Industries, Inc.

98503

DIGEST:

1. There is no legal principle on which an award may be disturbed merely because bidder may have submitted below cost bid.
2. GAO does not review affirmative determinations of responsibility except for actions which are tantamount to fraud or misapplication of definitive responsibility criteria contained in solicitation.

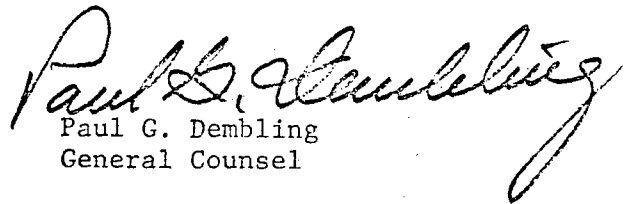
Futronics Industries, Inc. (Futronics), has protested against the award made under solicitation No. AC3A-6-0496 by the Federal Aviation Administration. Futronics alleges that the awardee, Electromatic Systems, Inc. (Electromatic) submitted an extremely low price and, therefore, either the "bid was not responsive or the bidder is not a [responsible] * * * bidder."

In regard to Futronics' contention that Electromatic's bid is unreasonably low, we are unaware of any legal principle which would preclude or provide a basis for disturbing an award merely because the successful bidder submitted a below cost bid. We have held that the fact that the low bidder might incur a loss in performing the contract at the price shown in its bid does not justify rejecting an otherwise acceptable bid. B-173088, July 27, 1971. To properly reject a bid as being extremely low would require a determination of nonresponsibility as opposed to nonresponsiveness. Parson Custom Products, Inc., B-185104, November 14, 1975, 75-2 CPD 311 and cases cited in text.

Insofar as the protest may relate to Electromatic's responsibility, this Office does not review protests against affirmative determinations of responsibility, unless either fraud is alleged on the part of procuring officials or the solicitation contains definitive responsibility criteria

which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. However, we will continue to consider protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids.

For the above-stated reasons, we must decline to consider the merits of the case.


Paul G. Dembling
General Counsel